

THE CLINTON WATCH COMPANY ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 7434. Complaint, Mar. 11, 1959—Decision, July 19, 1960

Order requiring Chicago distributors of watches to mail order and discount houses, wholesalers and retailers for resale, to cease representing "All Movement Parts GUARANTEED FOR LIFE Never To Break" in adver-

Syllabus

The respondents' appeal is denied. The initial decision, modified as noted above, is adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon the appeal filed by the respondents from the initial decision of the hearing examiner; and

The Commission having denied the appeal for reasons stated in the accompanying opinion and having further determined that the order to cease and desist contained in the initial decision should be modified:

It is ordered, That the unnumbered paragraph in preamble to the three numbered paragraphs contained in said order be, and it hereby is, modified to read as follows:

"It is ordered, That respondent Witkower Press, Inc., a corporation, and its officers, and respondents Dan Dale Alexander and Bernard Witkower, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of a book entitled 'Arthritis and Common Sense,' or any other book or books of the same or of approximately the same content, material or methods, whether sold under the same name or any other name, in commerce, as 'commerce' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that the regimen set out in said book provides:"

It is further ordered, That the initial decision, as so modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist as modified.

IN THE MATTER OF

THE CLINTON WATCH COMPANY ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

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Order requiring Chicago distributors of watches to mail order and discount houses, wholesalers and retailers for resale, to cease representing "All Movement Parts GUARANTEED FOR LIFE Never To Break" in adver-

tising their watches, when in fact the guarantee required payment of an undisclosed service charge for repairs or adjustments; and to cease pre-ticketing their watches with exaggerated amounts and designating fictitious prices as "retail prices" in catalog inserts and other advertising, whereby retailers were enabled to mislead the public as to the usual retail prices.

Mr. William A. Somers for the Commission.

Mr. Paul G. Annes, of Chicago, Ill., for respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

In this proceeding respondent watch company and its officers are charged with having engaged in unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the Federal Trade Commission Act. These alleged acts and practices, in substance, are that respondents have made deceptive so-called "lifetime guarantees" of their watches and have also used fictitious pricing by setting forth exaggerated and untrue retail prices of their watches on tickets attached to their watches, and by quoting certain exaggerated and untrue retail prices in their catalogues, brochures and other advertising media relating to such watches.

In this initial decision the charges of the complaint are found to be sustained by the evidence as to all respondents named in the complaint except respondents Bernard J. Cogan and Max Magnus in their individual capacities, as to whom the complaint is dismissed for reasons hereinafter set forth; but said two respondents are included in the findings and order as officers of the respondent corporation.

This proceeding was instituted by the issuance of the complaint on March 11, 1959. Thereafter due service of process was had upon all respondents, who jointly filed their answer on April 22, 1959. At a hearing held in Chicago, Ill., on June 18, 1959, the Commission's case was presented, and on September 28, 1959, the respondents presented their evidence at a further hearing in Chicago. The parties thereafter, on November 16, 1959, filed their respective proposed findings of fact, conclusions of law and order. Those proposals which have been adopted are included in the initial decision either in substance or verbatim, and all others have been rejected.

The record is quite brief, consisting of only 73 pages of testimony, stipulations of fact, remarks of counsel and rulings of the examiner, plus 13 documentary Commission's exhibits, all being advertisements and related papers of respondent. The record was materially shortened by counsel stipulating most of the evidence, by relatively brief testimony, and by a general absence of objection to evidence.

Respondents, during the hearing, petitioned the hearing examiner to accept a consent order agreeable to both parties, but acceptance thereof was conditioned by a claim that in order to avoid serious injury to respondents' business, issuance of any decision herein should be withheld until all the Commission's pending cases against various competitor watch companies were also ready for decision. Counsel supporting the complaint opposed this petition, although quite willing to agree to a consent order not so conditioned. The examiner denied this petition (R. 6-8) and also a later motion to the same effect (R. 59-69), primarily upon the ground that he had no authority to so act, since the matter is one of administrative policy and discretion vested solely in the Commission itself, to which body such a petition should be addressed (R. 6-8, 32). That this is the law is no longer open to question. See *Moog Industries, Inc. v. FTC* and *FTC v. C. E. Niehoff Co.* (1958), 355 U.S. 411, 413-414, rehearing denied 356 U.S. 905, holding that such power is not even vested in the Courts. No statute and no rule of the Commission delegates such authority or discretion to a hearing examiner. He can only pass upon the particular adjudicative proceeding before him, and "The taking of evidence and subsequent proceedings shall proceed with all reasonable expedition" (Commission's Rules of Adjudicative Proceedings, § 3.16(d).) Also by the Commission's Rules (§ 3.25 (d)), the hearing examiner must dispose of an agreement containing a consent order within 30 days of its receipt, either by accepting it and issuing an initial decision based thereon, or by rejecting it.

Several motions to dismiss for lack of proof were made after the close of the Commission's case-in-chief. They were denied, with leave to renew the same at the close of all evidence, or in the filed proposals, which latter method respondents have followed. The said motions of respondents Cogan and Magnus, made at the time the Commission's case was rested, were denied as being procedurally premature in any event. The motions as to all respondents were denied on the basis that a *prima facie* case had been made, under the now well-established doctrine of *Vulcanized Rubber and Plastics Co.*, Docket 6222 (1955), 52 FTC 533, decision (1956) 53 FTC 920, affirmed on review in *Vulcanized Rubber and Plastics Co. v. FTC* (C.A. of D.C. 1958), 528 F. 2d 684, followed in the Commission's order of May 27, 1959, in *Timken Roller Bearing Co.*, Docket 6504, and its order of January 5, 1959, in *Scott Paper Co.*, Docket 6559, and in several other decisions. The motions are renewed in respondents' proposals on the basis of the insufficiency of the evidence as to each and all respondents, but, except as to respondents Cogan and Magnus solely in their individual capacities, they are denied because

the evidence fully sustains the allegations of the complaint, as hereinafter specifically found.

The two basic issues in contest herein are (1) whether the words "All Movement Parts Guaranteed For Life never to break" and similar expressions used in the advertising of respondents' watches are false, misleading and deceptive; and (2) whether the respondents have falsely represented the proper retail prices of their watches by pre-ticketing and otherwise advertising them at fictitious prices far above the actual retail prices at which such watches are sold to the public. Both of these issues are herein found to be sustained by the evidence, and such acts and practices are held to be violative of the Federal Trade Commission Act. A cease-and-desist order appropriate thereto is herewith issued.

In determining the facts in this proceeding upon the whole record as required by law, the hearing examiner has given full, careful and impartial consideration to all the evidence and to the fair and reasonable inferences arising therefrom. He has found those facts alleged in the complaint, which are admitted by the answer, to be true. Therefore, upon due consideration of the whole record, as well as from the personal observation of the conduct and demeanor of the witnesses, the hearing examiner makes the following findings of fact:

1. It is alleged in the complaint and admitted in the answer and upon the pleadings and evidence factually found that respondent, The Clinton Watch Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 111 South Wacker Drive, Chicago, Ill.; that respondents Irving L. Wein, Bernard J. Cogan and Max Magnus are officers of the corporate respondent; and that respondent Wein formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. The address of respondent's officers is the same as that of the corporation.

It is undisputed that respondent Wein is the president of the respondent corporation. He alone formulates, directs and controls the corporate policies, acts and practices (R. 39, 40-41). While it is admitted in paragraph Two of the Answer that respondent Cogan is Vice-President and respondent Magnus is Secretary of the corporate respondent, the former functioning as sales manager and the latter as bookkeeper and accountant (R. 17-18), neither Cogan nor Magnus has anything to do with the corporation's advertising and pricing practices (R. 17-18, 37-39). Neither Cogan nor Magnus hold any stock in the corporation, and neither of them is a director thereof (R. 39-40). Under these circumstances there is no personal

authority, interest or action shown on the part of either of them in the practices of respondent here under attack, to warrant an order against either in his personal capacity. See Opinion of the Commission, dated October 20, 1950, in Docket 7146, *Trans-Continental Clearing House, etc., et al.*, and authorities cited. The complaint herein should therefore be dismissed as to respondents Cogan and Magnus, each in his individual capacity, but not in his capacity as an officer of the corporate respondent.

2. The evidence also sustains the allegations of the complaint that respondents are now, and for some years last past have been, engaged in the advertising, offering for sale, sale and distribution of watches to mail order and discount houses and wholesalers, and also to retailers for resale to the public. See Record, pages 10-15, inclusive, stipulation of fact; pages 16-29 and 41-46; and also all of Commission's Exhibits 1-A through 13-D. The evidence clearly discloses a very substantial annual volume of business of about \$1,500,000 (R. 46). This business is done with about 4,000 distributors, but about \$100,000 of it is done mainly with about 100 retail distributors (R. 41, 45-46). These customers of respondent corporation are located throughout the United States, and the record clearly establishes that, as alleged in the complaint, respondents, in the course and conduct of their business, now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States, and now maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents admit this in their Answer, and the stipulation of record shows numerous actual, substantial purchases from respondent of its watches by a number of specifically named jewelry merchants, both wholesalers and retailers (R. 10-15), located in various places in the States of Indiana and Wisconsin.

3. The complaint further alleges, and the evidence establishes without dispute, that respondents used such words and expressions as "All Movement Parts GUARANTEED FOR LIFE Never To Break" in the advertising of some of their watches, thereby representing that the movements of said watches are fully guaranteed by them in every respect. See Commission's Exhibits 11-A through -D. Respondents contend that after such guarantee was adopted several years ago, they have made no charge whatever for repair parts or other service charges when defective watches are returned to them for correction of such defects under their guarantee. See Exhibit 12, Service Dept. price list, effective Aug. 12, 1957, as compared to their

earlier service price list, Exhibit 6-B. They have only charged reimbursement for packing, postage, insurance, and other expenses incurred in returning repaired or replaced watches to customers. It is also true that some of their cheaper brands of watches do not carry said guarantee (R. 27). But all such statements and representations of lifetime guarantee are false, misleading, and deceptive because the guarantee furnished by respondents actually require the payment of a service charge for repairs or adjustments, which fact was not disclosed in respondents' advertisements. That this reimbursement charge was small and the actual cost to respondents slightly exceeded it are immaterial. The guarantee itself says the watch is "unconditionally guaranteed" and the guarantee is "all-inclusive." Its limitations only except certain named breakages and the like. Reference on the back of the guarantee slip (Commission's Exhibit 11-D) to a \$1 handling charge for servicing the watch does not relieve it of the capacity and tendency to deceive the public. The consumer does not actually see that precise guarantee on his watch until he actually purchases it (R. 26) and may miss it altogether because of its lack of prominence along with the guarantee. Moreover, in respondents' advertising, repeated emphasis is laid on an unlimited statement, in large, colored type, "Guaranteed for Life." See Exhibits 1-A through -D, 2-A and -B, 3, pages 8-A through -D, and 13-A through -D, advertising respondents' "Clinton" and "Wolbrook" brands of watches. Such limitations thereto as appear are in very inconspicuous small type. A number of consumers were actually misled by respondents' guarantee into believing there would be no service charge (R. 15-16). Counsel supporting the complaint cites *Parker Pen Co. v. FTC* (C.C.A. 7, 1946), 159 F. 2d 509, as authority for a cease-and-desist order on this particular charge. It is strong authority. In that case, as here, the evidence disclosed that the small service charge for repairing the Parker Company's "Lifetime guarantee pen" was so inconspicuously printed and placed in its advertisements as to pass unnoticed by the casual or negligent reader, whom it is the Commission's function to protect. The Court held that such "guarantee" advertisements might be permitted, but only if the less noticeable limitations within the apparently absolute guarantee were placed in close conjunction with and in the same sized type as the guarantee itself. The provisions of the order issued herewith, which appropriately relate to this phase of the case however, are broader and less specific than the precise, judicially modified order in the *Parker* case. The order herein issued follows current practice in this type of litigation, and lends better to the protection of the public interest.

It is further alleged in the complaint (paragraph 6 and 7) and found from the evidence, that respondents, for the purpose of inducing the purchase of their products, have engaged in the practice of using fictitious prices in connection therewith by attaching, or causing to be attached, tickets to their said watches upon which certain amounts are printed, and have also designated certain prices as "retail prices" in catalogue inserts, brochures, circulars, and other advertising distributed to mail order and discount houses, wholesalers and retailers, thereby representing, directly and by implication, that the same amounts and prices were the usual and regular retail prices for said watches. In truth and in fact, said amounts and prices were not the usual and regular retail prices for said watches, but were fictitious and exaggerated prices. By such practices, respondents have placed and still do place in the hands of retailers means and instrumentalities by and through which they may and do mislead the public as to the usual and regular retail prices of said watches. It requires no extended argument to demonstrate that members of the public may well be deceived into believing they have made a great bargain if, for example, they can buy a \$55 watch for \$29, as the following evidence amply discloses.

The stipulated evidence (R. 10-16) shows that the usual and regular retail prices indicated by respondents' preticketing and catalogue prices were fictitious and greatly exaggerated. For example, watches preticketed at \$55 each were sold for \$29, or about such price, to the public, and watches preticketed at \$24.75 and \$26.50 were actually sold at \$11.25 apiece. These sales, for the most part, were made by mail. This preticketing practice is the universal practice of respondents. Respondent Wein testified, in effect (R. 67-68, 70-71), that they were only suggested prices which were so set by respondents in order to meet competitive prices, and that they were usually lower than prices charged by watch industry leaders for similar products. It is vainly contended by respondents that they have not violated the Federal Trade Commission Act since, by their pricing methods, they have increased competition and lowered prices of watches to the ultimate consumer, although the corporate respondent does only \$1,500,000 annual business, as against much larger competitors, some of whom do up to 20 million dollars' worth of annual business. Said respondent claims to rank only about 15th to 20th in its line of business. The evidence actually establishes the fact of substantial competition, although proof of such is unnecessary under the Wheeler-Lea Amendment of 1938 to the Federal Trade Commis-

222

Order

sion Act where unfair practices in commerce have been established as here. It is therefore found that respondents are in substantial competition in commerce with corporations, firms and individuals engaged in the sale of watches, and their practices unfairly divert business from competitors, to the substantial injury thereof. Of course, the illegal pricing practices of respondents are not purged of their unfair and unlawful character by reason of competitive practices and prices so urged by respondents as a defense.

The evidence fully establishes both charges of the complaint, and the examiner finds that the use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true, and causes them to purchase substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

CONCLUSIONS OF LAW

Out of the foregoing findings of fact, the hearing examiner draws the following conclusions of law:

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the person of each of the respondents;

2. This proceeding is to the interest of the public, and such interest is specific and substantial;

3. The acts and practices of the respondents, as hereinabove found, were and are all to the prejudice and injury of the public and of the respondents' competitors and constituted and now constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The following order is therefore entered:

ORDER

It is ordered, That respondent The Clinton Watch Company, a corporation, and its officers; Irving L. Wein, Bernard J. Cogan and Max Magnus, as officers of said corporation; and Irving L. Wein, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of watches, or any other merchandise, in commerce, as "commerce" is defined

in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, in any manner that any amount is the retail price of merchandise, when such amount is in excess of the price at which such merchandise is usually and regularly sold at retail in the trade area or areas where the representations are made;
2. Putting into operation any plan or device whereby others may misrepresent the regular and usual retail price of respondents' merchandise;
3. Representing that any merchandise offered for sale is guaranteed, unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly disclosed;
4. Representing that merchandise is guaranteed, when a service charge is imposed, unless the amount thereof is clearly disclosed.

OPINION OF THE COMMISSION

By ANDERSON, *Commissioner*:

The complaint in this matter charges respondents with misrepresenting the terms of the guarantee furnished with their watches and with using fictitious prices for the purpose of inducing the purchase of these watches, all in violation of the Federal Trade Commission Act. The hearing examiner in his initial decision held that the allegations of the complaint were sustained by the evidence and ordered respondents to cease and desist from the practices found to be unlawful. Respondents have appealed from this decision.

The record fully supports the hearing examiner's finding that the amounts set forth by respondents on tickets which they attach to their watches and which are represented as retail prices in promotional material distributed to mail order and discount houses, wholesalers and retailers, are not the usual and regular retail prices of their watches. The argument advanced by respondents that their prices are equal or lower than prices of competing sellers cannot justify the deception inherent in their price representations. That deception as to price is to the prejudice and injury of the public within the intent, scope and meaning of the Federal Trade Commission Act is well established and respondents' contention to the contrary is rejected. *Consumer Sales Corp. v. Federal Trade Commission*, 198 F. 2d 404 (2d Cir. 1952); *International Art Company v.*

Federal Trade Commission, 109 F. 2d 393 (7th Cir. 1940); *Harsam Distributors, Inc. v. Federal Trade Commission*, 263 F. 2d 396 (2d Cir. 1959).

Throughout this proceeding, respondents have requested that the Commission stay the effective date of any cease and desist order with respect to the fictitious pricing charge until Commission proceedings involving similar charges against certain of their competitors are completed. We have carefully considered the grounds set forth by respondents in support of this request, and it is our opinion that the public interest far outweighs the private considerations urged by respondents. Respondents' request is therefore denied. It is our opinion that the public interest in protecting purchasers from practices found to be unlawful by requiring immediate cessation thereof far outweighs whatever public or private interest may be present in allowing such practices to continue for any length of time for other reasons. Respondents' request is therefore denied.

The hearing examiner ruled that respondents' use of such advertising claims as "All Movement Parts GUARANTEED FOR LIFE Never To Break" was deceptive for the reason that the advertisements did not disclose the existence of a \$1.00 handling charge. Respondents contend that this ruling is in error since the repairing and replacing of parts is done without charge, the \$1.00 charge being made only to reimburse respondents, in part, for postage, insurance and other expenses incurred in returning the watch to the buyer. This argument is rejected on the authority of *Parker Pen Co. v. Federal Trade Commission*, 159 F. 2d 509 (7th Cir. 1946). In that case, the court in considering this same point with reference to the respondents' advertised "lifetime guarantee" on its pens, concluded that a guarantee *per se* negatives the idea of a further consideration on the part of a purchaser in his effort to obtain satisfactory performance from the article guaranteed.

Respondents next contend that the complaint should be dismissed as to respondents Bernard J. Cogan and Max Magnus in their official capacities, on the basis of the hearing examiner's finding that neither of these persons was individually responsible for the practices of the corporate respondent. Although this finding justifies the hearing examiner's dismissal of the complaint as to these persons in their individual capacities, it has no bearing on whether they should be held as officers. There is no dispute that Cogan and Magnus were Vice-President and Secretary, respectively, of the respondent corporation and there is no showing that they do not now occupy those positions. In their official capacities they are responsible

Complaint

57 F.T.C.

at least in part for the conduct of the corporate business and they act for and in behalf of the corporation. Consequently, the cease and desist order to be fully effective is properly directed against those named individuals in their official capacities. *Sebrone Co. v. Federal Trade Commission*, 135 F. 2d 676 (7th Cir. 1943); *Mandel Brothers, Inc. v. Federal Trade Commission*, 254 F. 2d 18 (7th Cir. 1958).

The appeal of respondents is denied and the initial decision will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon respondents' appeal from the hearing examiner's initial decision, and upon briefs and oral argument in support thereof and in opposition thereto; and the Commission having rendered its decision denying the appeal and adopting the initial decision:

It is ordered, That respondents, The Clinton Watch Company, a corporation, and Bernard J. Cogan and Max Magnus, as officers of said corporation, and Irving L. Wein, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF

HERMAN WINTERS ET AL. DOING BUSINESS AS
WINTERS-SCHNEIDER SALES AGENCYCONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7679. Complaint, Dec. 4, 1959—Decision, July 19, 1960

Consent order requiring three individuals in California to cease obtaining information from debtors through subterfuge, including the use of terms and forms similar to those used by the U.S. Government, and a Washington, D.C., mailing address, and representations that a sum of money was due and could be collected by persons filling in the desired information.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal

Trade Commission, having reason to believe that Herman Winters, Ralph Schneider and Sidney Mandy, individually and as copartners, trading and doing business as Winters-Schneider Sales Agency, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Herman Winters, Ralph Schneider and Sidney Mandy are individuals and copartners trading and doing business under the name of Winters-Schneider Sales Agency. Respondents' office and principal place of business is located at 1063 North Vine Street, Hollywood, Calif. They maintain an office or agent in Washington, D.C., at Room 501, 1424 K Street, NW.

PAR. 2. The respondents are now, and for more than one year last past have been, engaged in the business of selling printed mailing forms under their respective trade names. Respondents cause said printed material when sold, to be transported from their place of business in the State of California to purchasers thereof at their respective points of location in various other States of the United States. Respondents maintain, and at all times herein mentioned have maintained, a course of trade in their said products in commerce between and among the various States of the United States. Respondents' volume of trade is substantial.

The said printed material sold and transported by the respondents, as heretofore alleged, is designed and intended to be used and is used by collection agencies, merchants and others to whom it is sold for the purpose of obtaining information concerning delinquent debtors, with the aid and assistance of respondents as hereinafter set forth.

The said printed material consists of the following:

Job Locaters Forms

SA-1 IBM card shaped and punched, captioned "Semi-Annual Employment record."

SA-2 IBM card shaped and punched plus black arrow, captioned "Semi-Annual Employment Record."

E-2 IBM size and shape, captioned "Change of Employment Records, Second Notice."

DSD IBM punched, captioned "Employment Verification Request, Area-A."

VV IBM shaped and punched, captioned "Department of Vehicle Verification Records."

Complaint

57 F.T.C.

Skip Locaters Forms

K-1 IBM shaped and punched, captioned "Department of Claims and Settlements."

AA IBM shaped, captioned "Office of Area A."

Collection Forms

M-1 IBM shaped and punched, captioned "Bureau of Settlements and Collections, Demand for Payment of Debt."

M-2 IBM shaped and punched, captioned "Bureau of Settlements and Collections, Final Demand for Payment of Debt."

Payment Voucher Form

Green paper, captioned "Payment Voucher, Division of Disbursements."

All of said forms are designed to be forwarded from Washington, D.C. to the addressees in stamped or metered envelopes provided by respondents in which are enclosed the form and a return postage paid envelope addressed to the name used such as: "Semi-Annual Employment Record," "Change of Employment Records," "Employment Verification Request, Area-A", "Department of Vehicle Verification Records," "Department of Claims and Settlements, Office of Area A," "Bureau of Settlements and Collections," and "Payment Voucher, Division of Disbursements." All are addressed to 1424 K Street, NW., Washington, D.C. Each of said forms sets out questions, which if answered will provide information which is considered to be of value in the collection of accounts owed or alleged to be owed by the addressee. The purchasers of respondents' printed material above referred to, fill in the appropriate data in the spaces provided including the name of the alleged debtor and in the case of the "Department of Claims and Settlements" form and "Bureau of Settlements and Collections" forms, the amount of the alleged indebtedness, and send the forms in bulk to respondents' agent at the aforesaid Washington, D.C. address, and respondents' agent then mails the forms from that location. If the addressee completes the form and remails it, respondents' agent forwards such form and any others in bulk to respondents at their address in Hollywood, California, where they are processed and either the completed forms themselves or the information contained thereon is forwarded to their purchasers.

PAR. 3. Typical of the printed forms sold by respondents and used in the manner aforesaid by their purchasers are the following:

232

Complaint

SEM-ANNUAL EMPLOYMENT RECORD

ROOM 501
1424 "K" STREET, N.W., WASHINGTON 5, D. C.
All Questions Must Be Answered Correctly and Form Returned at Once

Do Not Fold, Staple,
or Mutilate

John C. Debtor
Street Address
City and State

If mail was forwarded please correct.

SA-1

FRONT

Name John Q. Debtor Wife's Name Jane Debtor (if known)

Address _____ Wife's Address _____

City _____ State _____ City _____ State _____

Present Employer _____ Wife's Employer _____

Employer's Address _____ Employer's Address _____

City _____ State _____ City _____ State _____

How Long Employed Here _____ How Long Employed Here _____

Occupation SOC. SEC. # _____ Occupation SOC. SEC. # _____

Days Employed Per Week ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 Days Employed Per Week ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6

YOUR SIGNATURE _____ WIFE'S SIGNATURE _____

SA-1

BACK

Complaint

57 F.T.C.

SEMI-ANNUAL EMPLOYMENT RECORD	
ROOM 501 1424 "K" STREET, N.W., WASHINGTON 5, D. C.	
All Questions Must Be Answered Correctly and Form Returned at Once	
IMPORTANT REQUEST FOR	John C. Debtor Street Address City and State
	Do Not Fold, Staple, or Mutilate
If mail was forwarded please correct.	

FRONT

The Verification Department of the Semi-Annual Employment Records Division has been advised that you have failed to answer the original request. Records must be kept current.

Answer All Questions Below —

GIVE REASON HERE WHY FIRST FORM WAS NOT RETURNED AS REQUESTED	GIVE REASON HERE WHY FIRST FORM WAS NOT RETURNED AS REQUESTED
Name <u>John Q. Debtor</u>	Wife's Name <u>Jane Debtor (if known)</u>
Address _____	Wife's Address _____
City _____ State _____	City _____ State _____
Present Employer _____	Wife's Employer _____
Employer's Address _____	Employer's Address _____
City _____ State _____	City _____ State _____
How Long Employed _____ coc. sec. # _____	How Long Employed _____ coc. sec. # _____

BACK

232

Complaint

CHANGE OF EMPLOYMENT RECORDS
ROOM 501
1424 "K" STREET, N.W., WASHINGTON 5, D. C.
All Questions Must Be Answered Correctly and Form Returned at Once!

SECOND NOTICE

John C. Debtor
Street Address
City and State

DO NOT FOLD, STAPLE, OR MUTILATE

If Mail Was Forwarded, Give Correct Address on Reverse Side.

U.S.

FRONT

YOU PREVIOUSLY STATED THAT YOU WERE UNEMPLOYED.
THIS DEPARTMENT HAS BEEN ADVISED THAT YOU HAVE CHANGED EMPLOYERS!
RECORDS MUST BE KEPT UP TO DATE!

Name John Q. Debtor

Social Security No. New Living at City State

New Employed by

Employer's Address City State

Occupation How Long Employed Here

Previous Employer

U.S.

BACK

Complaint

57 F.T.C.

A R E A A		EMPLOYMENT VERIFICATION REQUEST
A		
For Immediate Communi- cation RETURN THIS FORM AT ONCE DO NOT PIN, FOLD STAPLE OR MUTILATE D.S.D.	John Q Debtor Street Address City and State	Listed Areas A B C D United States 7

FRONT

OFFICE OF DISTRICT A Room 501 - 1424 "K" Street, N.W., Washington 5, D. C.		RETURN THIS FORM AT ONCE
District Survey		
Employment Verification Division		Automobile Registration Division
Name John Q. Debtor Address _____ City _____ State _____ Present Employer _____ Employer's Address _____ City _____ State _____ How Long Employed _____ Social Security Number _____	Name Jane Debtor Wife's Address _____ City _____ State _____ Wife's Employer _____ Employer's Address _____ City _____ State _____ How Long Employed _____ Social Security Number _____	Do You Own An Automobile? ☐ YES ☐ NO ☐ TWO CARS Make of Car _____ Year of Car _____ License Number _____ Payment State To _____ Address _____ City & State _____
		Banking Records Division
		Do You Have a Bank Account? ☐ YES ☐ NO Bank Name _____ Bank Address _____ City & State _____ CHECKING ☐ SAVINGS ☐ Signature _____

BACK

Department of Vehicle Verification Records
 Dept. 501 - 1424 "K" STREET, N. W. WASHINGTON 5, D. C.

IMPORTANT REQUEST FOR

John C. Debtor
 Street Address
 City and State

Do Not Fold, Staple, or Mutilate.

If mail was forwarded please correct.

FRONT

The Verification Department of the AUTOMOBILE REGISTRATION Records Division has been advised that you have failed to answer the original request. Records must be kept current. Answer All Questions Below —

GIVE REASON HERE WHY FIRST FORM WAS NOT RETURNED AS REQUESTED

STATE OF YOUR STATE

Automobile Records Division

Do You Own a Car? ☐ YES ☐ NO ☐ 2 CARS

Make of Car _____ Year _____

License No. _____ State _____ Registered In _____

Payments Made To _____

Address _____

City _____ State _____

Name John C. Debtor

Address _____

City _____ State _____

Employer _____

Employer's Address _____

City _____ State _____

How Long Employed _____ Soc. Sec. No. _____

BACK

Complaint

57 F.T.C.

DEPARTMENT OF CLAIMS AND SETTLEMENTS ROOM 501 1424 "K" STREET, N.W., WASHINGTON 5, D. C.			
ADDRESSEE Answer all questions on reverse side as accurately as possible	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"> John C. Reference Street Address City and State </td> <td style="width: 50%; padding: 5px;"> Relative Neighbor Last Known Employer Landlord Union Affiliation </td> </tr> </table>	John C. Reference Street Address City and State	Relative Neighbor Last Known Employer Landlord Union Affiliation
John C. Reference Street Address City and State	Relative Neighbor Last Known Employer Landlord Union Affiliation		

FRONT

PLEASE RETURN THIS FORM AT ONCE	
The Department of Claims & Settlements has been unable to process the settlement of <u>John O. Debtor and Jane Debtor</u> in the sum of \$ <u>Amount</u> (Debtors Owe)	
MAIL HAS BEEN RETURNED — MOVED, NO NEW ADDRESS GIVEN	
The following information is necessary to process the above settlement.	
Name <u>John O. Debtor</u>	Wife's Name <u>Jane Debtor</u>
New Residence Address _____	Wife's Residence Address _____
City _____ State _____	City _____ State _____
New Employer _____	Wife's Employer _____
Employer's Address _____	Employer's Address _____
City _____ State _____	City _____ State _____
Relative's Name & Address _____	City _____ State _____
DO NOT FOLD OR MUTILATE	

BACK

232

Complaint

AREA - A		All Information Pertaining to Person and/or Persons Listed on Reverse Side of This Form Should Be Filled In As Accurately as Possible and Returned to the Area A Office at Once
A		
JOHN Q. REFERENCE 1127 W. Colfax Denver, Colorado		Listed Areas A B C D
DO NOT PIN, FOLD STAPLE OR MUTILATE		United States 13

FRONT

If Unable to List Now Address of Person and/or Persons Give Name and Address of Relative Who Might Have Knowledge of Whereabouts of → RETURN THIS FORM AT ONCE	OFFICE OF AREA A ROOM 501 -1424 K ST. NW WASHINGTON, D.C. THE OFFICE OF AREA "A" IS ATTEMPTING TO LOCATE THE WHEREABOUTS OF:		EMPLOYMENT VERIFICATION REQUEST For Immediate Communi- cation RETURN THIS FORM AT ONCE
	Mr. John Q. Debtor Now Residing at..... City.....State..... Now Employed by..... Address of Employer..... City.....State..... Social Security Number..... Relative's Name.....	Mrs. or Miss. Jane Debtor Now Residing at..... City.....State..... Now Employed by..... Address of Employer..... City.....State..... Social Security Number..... Address.....	

BACK

Complaint

57 F.T.C.

BUREAU OF SETTLEMENTS AND COLLECTIONS	
Room 501 • 1424 "K" Street, N.W., Washington 5, D. C.	
Jan.	PAY THIS AMOUNT
Feb.	\$78.32
Mar.	AMOUNT PAST DUE
April	Make Check or
May	Money Order Payable To:
June	
July	
Aug.	We Print Your Firm
Sept.	Name At The Same
Oct.	Time We Print Form
Nov.	
Dec.	
Bring This Form With You. If Unable to Appear send Amount Past Due by Mail to Creditor's Office	

Demand for Payment of Debt

Date Typed
DATE

John C. Debtor
 Street Address
 City and State

Creditor must record all payments and forward receipt to Debtor.

This form must be returned with payment within 12 days in order for proper credit to be given.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30

FRONT

(BLANK)

BACK

BUREAU OF SETTLEMENTS AND COLLECTIONS																														
Room 501 • 1424 "K" Street, N.W., Washington 5, D. C.																														
Jan.											Final Demand for Payment of Debt										Upon Receipt Of Payment Creditor will Record Payment And Immediately Send Receipt To Debtor.									
Feb.																					Send Check or Money Order — Do Not Send Cash.									
Mar.																														
April																														
May																														
June																														
July																														
Aug.																														
Sept.																														
Oct.																														
Nov.																														
Dec.																														
Debtor →										John Q Debtor																				
										Street Address																				
										City and State																				
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31																														

FRONT

PAY THIS AMOUNT		TO	(if desired)	FOR
\$78.32			We Print Your Firm Name At The Same Time We Print Form	In this space you type your client's name
AMOUNT PAST DUE			CREDITOR	CLIENT
Notice To <u>Debtors Name</u> As of <u>Date typed</u> , this bureau was advised of a just indebtedness in the sum of \$ <u>Amount Debtor Owes</u> . The addressee must bring this form with payment to creditors office located at <u>Your address</u> in the city of <u>Your city</u> , state of <u>Your state</u> on or before the <u>15</u> of <u>JULY, 1958</u> (Give Debtor 12 Days from Date Typed)				
This Demand is made according to law to give you a last opportunity to pay and to lay a foundation for legal action on said claim if the same is not paid within the time aforesaid. Bring This Form With You. If Unable to Appear Send Amount Past Due by Mail to Creditors Office				

BACK

Complaint

57 F.T.C.

Disbursement Voucher		DO NOT TEAR THIS VOUCHER APART		NON-NEGOTIABLE	
IDENTIFICATION RECORDS SECTION					
HUSBAND'S full name		John Q. Husband			
Now Residing At	City				
Now Employed By	City				
Employer's Address	State				
Social Security No.	Occupation	Age			
WIFE'S full name		Jane Q. Wife			
Now Residing At	City				
Wife Now Employed By	City				
Employer's Address	State				
Wife's Social Security No.	Occupation	Age			
FOR PROMPT PROCESSING, PLEASE FILL IN ALL QUESTIONS — If Unemployed, Fill in As Unemployed — If Single, Write Single After Name. ATTENTION WIVES! If You Do Not Work At All — Fill in Questionnaire As HOUSEWIFE					
Additional Identification Required (If Box Above "Yes" Has An X in It, Fill in Below)		☒ YES ☐ NO			
Do You Have a Bank Account?		☐ YES ☐ NO			
BANK NAME					
Bank	City				
Address	State				
Savings a/c	Checking a/c	Loan	Safety Deposit Vault		
TO THE BEST OF MY KNOWLEDGE, I CERTIFY THE ABOVE INFORMATION IS CORRECT.					
Husband Signature					
Wife Signature					
ADDRESSEE: Retain This Stub Until Payment Is Made		RETURN ENTIRE VOUCHER			
PAYMENT VOUCHER 38-10-63		at Once			

JOHN Q. DEBTOR
 1423 - 7th Ave.
 Des Moines, Iowa

38-10
 63

38-10
 63

VOUCHER

Upon Receipt of This Completed, Signed, Identification Voucher, Monies Will Be Sent To You

RETURN ENTIRE VOUCHER PROMPTLY

RETURN ENTIRE VOUCHER PROMPTLY

IDENTIFICATION IS NECESSARY IN ORDER TO PROCESS THIS VOUCHER

PAYMENT VOUCHER

DIVISION OF DISBURSEMENTS

Dept. 501 - 1424 "K" STREET, N. W. WASHINGTON 5, D. C.

18

PAR. 4. Through the words or terms "Semi-Annual Employment Record," "Change of Employment Records," "Employment Verification Request," "Department of Vehicle Verification Records," "Department of Claims and Settlement," "Office of Area-A," "Bureau of Settlements and Collections," and "Division of Disbursements," particularly the words "Bureau," "Department," "Office," and "Division," on said forms, and also through the use of IBM cards, colored, shaped and punched in similar fashion to those used by many agencies of the United States Government or in the case of "Payment Voucher" the use of green paper similar to that used by the United States Government for checks, and through the use of symbols and numbers arranged on aforesaid forms in similar fashion to that of government forms such as "Do not fold, Staple or Mutilate" or in the case of "Payment Voucher" the numbers "38-10" as in

63

checks issued by the United States Government, and in the form and phraseology of said forms, respondents represent and place in the hands of the purchasers of their said forms, the means and instrumentalities whereby they represent and imply to those to whom said forms are mailed that the request for information is made by an agency or branch of the United States Government. The fact that such forms are mailed from Washington, D.C. and if desired by the purchaser under metered postage enhances such implication. The insertion in the "Department of Claims and Settlements" form of an amount the "Department" has been unable to "process the settlement" due to lack of information serves as a representation or implication that the amount inserted therein is due and owing to persons whose names are inserted in the forms and can be collected, and that by filling in the desired information they will thereby be entitled to receive such sum.

Through the use of the words and terms "Semi-Annual Employment Record," "Change of Employment Records," "Employment Verification Request," and "Department of Vehicle Verification Records" on said forms, and the nature of inquiries set out on said forms, respondents represent and place in the hands of purchasers of the said forms, instrumentalities by and through which they represent or imply that projects are being carried on by the United States Government for the purpose of ascertaining data on employment and vehicle ownership. The fact that these forms are mailed from Washington, D.C. enhances such implication.

PAR. 5. The aforesaid representations and implications were and are false, misleading and deceptive. In truth and in fact, the so-called "Semi-Annual Employment Record," "Change of Employment Records," "Office of District A," "Employment Verification

Request," "Department of Vehicle Verification Records," "Department of Claims and Settlements," "Office of Area-A," "Bureau of Settlements and Collections," and "Division of Disbursements" are not agencies or branches of the United States Government and the request for information set out therein does not come from any agency of the United States Government. There is no amount due or collectible to those to whom the forms referred to above are sent or to any other person.

The United States Government is not and never has been engaged through "Semi-Annual Employment Record," "Change of Employment Records," "Employment Verification Request, Office of District A," and "Department of Vehicle Verification Records" in obtaining data or other information on employment or vehicle ownership.

In truth and in fact, the sole business of respondents, conducted as aforesaid, is to sell the various printed forms to others to be used by them for the purpose of obtaining information concerning debtors and, by selling and placing said forms in the hands of the purchasers, respondents thereby furnish to such purchasers means and instrumentalities by and through which they may, and often do, obtain information by subterfuge.

PAR. 6. The uses, as hereinabove set forth, of respondents' printed forms containing the false, misleading and deceptive statements, representations, depictions and implications have had, and now have, the tendency and capacity to mislead and deceive many persons to whom said printed forms were sent into the erroneous and mistaken belief that the said statements, representations, depictions and implications were and are true and induce the recipients thereof to furnish information which otherwise they would not have supplied.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. John J. McNally for the Commission.

Dryden, Harrington, Horgan & Swartz, of Los Angeles, Calif., for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

In the complaint dated December 4, 1959 the respondents are charged with violating the provisions of the Federal Trade Commission Act.

On March 21, 1960, the respondents and their attorney entered into an agreement with counsel in support of the complaint for a consent order.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith. The agreement further recites that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint.

The hearing examiner finds that the content of the agreement meets all of the requirements of Section 3.25(b) of the Rules of the Commission.

The hearing examiner being of the opinion that the agreement and the proposed order provide an appropriate basis for disposition of this proceeding as to all of the parties, the agreement is hereby accepted and it is ordered that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission. The following jurisdictional findings are made and the following order issued.

1. Respondents Herman Winters, Ralph Schneider and Sidney Mandy are individuals and were, until October 10, 1959, copartners, trading as Winters-Schneider Sales Agency with their office and principal place of business located at 1063 North Vine Street, Hollywood, Calif. The current addresses of respondents are as follows: Herman Winters, 5723 Graves Avenue, Encino, Calif.; Ralph Schneider, Apartment 47, 2010 Latham Street, Mountain View, Calif.; and Sidney Mandy, 1004 South Second Street, Alhambra, Calif.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Herman Winters, Ralph Schneider and Sidney Mandy, as individuals, or as copartners doing business as Winters-Schneider Sales Agency, or under any other trade name or names, and respondents' representatives, agents or employees, directly, or through any corporate or other device, in connection with the business of obtaining information concerning delinquent debtors, or with the offering for sale, sale or distribution of forms, or other material, for use in obtaining information concerning delinquent debtors, or in the collection of, or in attempting to collect accounts,

in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using, or placing in the hands of others for use, any forms, letters, questionnaires or other materials, printed or written, which do not clearly reveal that the purpose for which the information is requested is that of obtaining information concerning delinquent debtors.

(2) Representing, or placing in the hands of others any means of representing, directly or by implication, that money is being held for, or is due, persons concerning whom information is sought, or is collectible by such persons, unless money is in fact due and collectible by such persons and the amount thereof is expressly stated.

(3) Using the terms: "Semi-Annual Employment Record," "Change of Employment Records," "Employment Verification Request," "Department of Vehicle Verification Records," "Department of Claims and Settlements," "Office of Area-A," "Bureau of Settlements and Collections," or "Division of Disbursements," or other words, terms or phrases of similar import to designate, describe, or refer to respondents' business; or representing, directly or by implication in any manner that requests for information concerning delinquent debtors are from, or have any connection with the Government of the United States or any agency or branch thereof.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 19th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.
